

IN THE CIRCUIT COURT OF
WEBSTER COUNTY, MISSOURI

STATE of MISSOURI ex rel.)
JEREMIAH W. (“JAY”) NIXON,)
Attorney General, and the)
MISSOURI DEPARTMENT OF)
NATURAL RESOURCES)

Plaintiff,)

v.)

Case No. _____

SUPREME OIL COMPANY and)
DALE HYDE in his individual capacity)
)
Defendants.)

Please Serve: Dale Hyde
103 Hubble Drive
Marshfield, MO 65706

Dale Hyde
103 N.E. Hubble Drive
P.O. Box 456
Marshfield, MO 65706
Registered Agent for Supreme Oil Company

PETITION FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES

COMES NOW, the State of Missouri, through the Attorney General, and states the following for its cause of action:

1. Jeremiah W. (“Jay”) Nixon is the duly elected, qualified, and acting Attorney General of the State of Missouri.
2. The Missouri Department of Natural Resources (the “Department”) is a state agency created under Section 640.010, RSMo., and is authorized to administer the provisions of the Missouri Underground and Petroleum Storage Tank Law, Sections 319.100 through 319.137, RSMo. and its implementing regulations (collectively, the “Missouri UST Law”).

3. Supreme Oil Company, Inc. (hereinafter, “Supreme Oil”) is an inactive Missouri corporation. Supreme Oil’s last annual report was filed in 2002.

4. Dale Hyde and/or Supreme Oil (hereinafter, “Defendants”) currently own real property located at 1322 Spur Road in Marshfield, Webster County, Missouri where Defendants conduct a business known as “C&N Convenience Store,” formerly “Brian’s Texaco,” identified by the Department as ST0013260 (hereinafter “C&N Convenience Store”). Furthermore, Defendants have been the owner of said real property at all times herein.

5. Dale Hyde is a Missouri resident.

6. At all times herein, Defendants have been an/the “owner” and “operator” of several underground storage tanks (hereinafter, “USTs”), as those terms are defined in Section 319.100, RSMo., and used in the Missouri UST Law, in that Defendants own the USTs at the C&N Convenience Store site and are responsible for the USTs’ day-to-day compliance with the Missouri UST Law.

7. Venue is proper herein pursuant to Section 319.127.1, RSMo., because the violations of the UST law alleged herein occurred in Webster County, Missouri and the subject property itself is located in Webster County, Missouri.

8. Missouri State Regulations 10 CSR 20-10.021 (for existing USTs) and 10 CSR 20-10.020 (for new USTs) (collectively, “the ‘98 upgrades”) require owners and operators of USTs in Missouri to have completed certain mechanical upgrades to their USTs to improve spill, overfill, and corrosion protection no later than December 22, 1998.

9. Section 319.114, RSMo and 10 CSR 20-11.093 require owners and operators of petroleum USTs in Missouri to submit evidence of financial responsibility (i.e., insurance or a

“FAI” (financial assurance instrument)) to the Department sufficient for taking corrective action and compensating third parties for bodily injury and property damage arising from petroleum releases.

10. On or about April 26, 1994, Defendants submitted a Petroleum Storage Tank Registration form (hereinafter, “registration form”) to the Department. Defendants’ registration form listed Supreme Oil Company as the owner of the USTs and the owner certification section was signed by Dale Hyde. Pages 2, 3, and 4 of the registration form were left blank. A true and accurate copy of Defendants registration form is attached hereto as “Exhibit 1” and incorporated herein by reference.

11. On March 31, 2003, the Department sent Defendants Letter of Warning (“LOW”) #PST-HW-03-119 for failing to have an appropriate FAI in place at the C&N Convenience facility, in violation of Section 319.114, RSMo and 10 CSR 20-11.093. LOW #PST-HW-03-119 required Defendants to submit proof of their FAI to the Department. A true and accurate copy of LOW #PST-HW-03-119 is attached hereto as “Exhibit 2” and incorporated herein by reference.

12. Defendants refused to comply with financial responsibility requirements and obtain an appropriate FAI following issuance of LOW #PST-HW-03-119.

13. Because Defendants failed to comply with financial responsibility requirements and secure an appropriate FAI for the C&N Convenience Store facility following issuance of LOW #PST-HW-03-119, on May 27, 2003 the Department issued Defendants Notice of Violation (“NOV”) #0305220514601. NOV #0305220514601 cited Defendants for their ongoing failure to comply with financial responsibility requirements (have and maintain an

appropriate FAI), in violation of 319.114 and 10 CSR 20-11.093. A true and accurate copy of NOV #0305220514601 is attached hereto as "Exhibit 3" and incorporated herein by reference.

14. Defendants continued in their refusal to comply with financial responsibility requirements and obtain an appropriate FAI following issuance of NOV #0305220514601.

15. Because Defendants failed to comply with financial responsibility requirements and secure an appropriate FAI for the C&N Convenience Store facility following issuance of NOV #0305220514601, on February 3, 2004 the Department sent Defendants LOW #PST-HW-04-006. LOW #PST-HW-04-006 cited Defendants for their continuing failure to comply with financial responsibility requirements (have and maintain an appropriate FAI), in violation of 319.114 and 10 CSR 20-11.093. A true and accurate copy of LOW #PST-HW-04-006 is attached hereto as "Exhibit 4" and incorporated herein by reference.

16. Defendants continued in their refusal to comply with financial responsibility requirements and obtain an appropriate FAI following issuance of LOW #PST-HW-04-006.

17. Because Defendants failed to comply with financial responsibility requirements and secure an appropriate FAI for the C&N Convenience Store facility following issuance of LOW #PST-HW-04-006, on July 28, 2004 the Department issued Defendants NOV #1012 TE. NOV #1012 TE cited Defendants for their ongoing failure to comply with financial responsibility requirements (have and maintain an appropriate FAI), in violation of 319.114 and 10 CSR 20-11.093. A true and accurate copy of NOV #1012 TE is attached hereto as "Exhibit 5" and incorporated herein by reference.

18. On September 29, 2004, Department staff conducted an inspection of the C&N Convenience Store facility to assess compliance with the Missouri UST Law. The Department's inspection revealed the following violations of the Missouri UST Law:

- a. Failure to comply with reporting and record keeping requirements, in that Defendants failed to have UST-system records available for Department inspection or submit them to the Department for review, in violation of 10 CSR 20-10.034;
- b. Failure to provide a release detection method capable of detecting a release from tanks or piping that routinely contain product, in that records demonstrating Defendants were conducting release detection were not available for Department review at the time of the inspection or subsequently submitted to the Department for review, in violation of 10 CSR 20-10.040; and
- c. Failure to conduct an annual test of operation of automatic line leak detectors ("ALLDs"), in that records demonstrating Defendants were conducting tests of ALLDs were not available for Department review at the time of the inspection or subsequently submitted to the Department for review, in violation of 10 CSR 20-10.044.

19. As a result of the violations observed during the Department's September 29, 2004 inspection, on October 15, 2004 the Department issued NOV # 10816 SW to Defendants. A true and accurate copy of NOV #10816 SW is attached hereto as "Exhibit 6" and incorporated herein by reference.

20. At the time of the Department's September 29, 2004 inspection, Defendants were without an appropriate FAI, in violation of 319.114 and 10 CSR 20-11.093.

21. Because Defendants failed to properly remedy the violations cited in NOV #10816 SW, on November 5, 2004 the Department issued Defendants NOV #10875 SW. NOV #10875 SW cited Defendants for the following violations of the Missouri UST Law:

- a. Failure to comply with reporting and record keeping requirements, in that Defendants failed to submit UST-system records to the Department for review following the September 29, 2004 inspection, in violation of 10 CSR 20-10.034;
- b. Failure to provide a release detection method capable of detecting a release from tanks or piping that routinely contain product, in that records demonstrating Defendants were conducting release detection were not submitted following the Department's September 29, 2004 inspection, in violation of 10 CSR 20-10.040; and
- c. Failure to conduct an annual test of operation of automatic line leak detectors ("ALLDs"), in that records demonstrating Defendants were conducting tests of ALLDs were not available for Department review at the time of the inspection or subsequently submitted, in violation of 10 CSR 20-10.044.

A true and accurate copy of NOV #10875 SW is attached hereto as "Exhibit 7" and incorporated herein by reference.

22. On November 29, 2004, the Department issued Defendants NOV #10912 SW. NOV #10912SW cited Defendants for the following violations of the Missouri UST Law:

- a. Failure to monitor tanks at least every thirty (30) days as required for a "monthly" release detection method, in that April and June 2004 automatic tank gauge ("ATG") tank release records were missing for all three of Defendants' petroleum tanks and no August

2004 leak rates were documented for UST number 2 and no September 2004 leak rates were documented for UST number 1, in violation of 10 CSR 20-10.041;

b. Failure to install, calibrate, operate, or maintain a release detection method in accordance with the manufacturer's instructions, in violation of 10 CSR 20-10.040;

c. Failure to notify the Department when release detection records indicate a release has occurred, in that ATG records for June 2004, September 2004, and October 2004 indicated a release had occurred from Defendants' premium unleaded UST but

Defendants failed to notify the Department, violation 10 CSR 20-10.040; and

d. Failure to investigate and confirm a release using accepted procedures, in that Defendants' did not conduct the proper "UST system test" following the suspected release to determine whether a release of petroleum actually occurred, in violation of 10 CSR 20-10.052.

A true and accurate copy of NOV #10912 SW is attached hereto as "Exhibit 8" and incorporated herein by reference.

23. To date, Defendants' C&N Convenience Store facility remains in noncompliance with the Missouri UST Law in that:

a. Defendants do not have an appropriate FAI in place for the facility's petroleum USTs, in violation of Section 419.114, RSMo and 10 CSR 20-11.093;

b. Defendants do not monitor tanks at least every thirty (30) days as required for a "monthly" release detection method, in violation of 10 CSR 20-10.041;

c. Defendants have failed and continue to fail to install, calibrate, operate, or maintain their release detection method in accordance with manufacturer's instructions, in violation of 10 CSR 20-10.040;

d. Defendants have failed and continue to fail to notify the Department when release detection records have indicated a release may have occurred, in violation 10 CSR 20-10.040; and

e. Defendants have failed and continue to fail to properly investigate and confirm whether a release occurred at the site, in violation of 10 CSR 20-10.052.

24. Section 319.127, RSMo. specifically authorizes this Court to impose a penalty of up to \$10,000.00 for each day, or part thereof, a violation of the Missouri UST Law occurs or continues to occur.

25. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff prays this Court enter its Order and Judgment against Supreme Oil Company and Dale Hyde as follows:

- A. Find that Defendants have repeatedly violated the Missouri UST Law;
- B. Order Defendants to pay a civil monetary penalty of up to \$10,000.00 for each of the violations of the Missouri UST Law at the C&N Convenience Store facility, multiplied by the number of days or partial days said violations occurred;
- C. Issue a preliminary and permanent injunction ordering Defendants to bring the C&N Convenience Store facility into compliance with the Missouri UST Law and comply with the Missouri UST Law in all future operations;

- D. Order Defendants to not refill the USTs at the C&N Convenience Store facility or accept deliveries of petroleum to the C&N Convenience Store facility until the facility is returned to compliance with the Missouri UST Law and a return to compliance letter is issued by the Department;
- E. Order Defendants to neither sell nor dispense any petroleum from the USTs at the C&N Convenience Store facility until the facility is returned to compliance with the Missouri UST Law and a return to compliance letter is issued by the Department;
- F. Order Defendants to at all future times promptly supply all relevant records requested by the Department and fully and diligently cooperate with the Department in its regulation of the Missouri UST Law;
- G. Order Defendants to pay Plaintiff's costs and fees associated with this action; and
- H. Grant such other relief as is just and proper under the circumstances.

Respectfully Submitted,

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Attorney General

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